

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF TEXAS
EL PASO DIVISION

BY SP
SEALED DEPUTY

§

**CT 3: 18 U.S.C. §§ 1349, 1346 and 1343
Conspiracy to Commit Wire
Fraud and the Deprivation of
Honest Services.**

EP 10CR2842

1. The El Paso Independent School District (EPISD), with approximately 63,000 students, was the seventh largest school district in the State of Texas, the largest School District in El Paso County. The EPISD was governed by a Board of Trustees consisting of seven district-wide elected officials who were authorized to oversee the management of the district. No individual trustee was authorized to act on behalf of the board.
2. The defendant, TOMAS GABALDON, was an Administrator for the El Paso Independent School District (EPISD).

3. The defendant, JOSEPH O'HARA, at different times during this Indictment, was an officer of vendor-1.

B. Texas Law Regarding the Conduct of Local Government Officials and Rules and Regulations Regarding Bids and Purchasing

1. Vernon's Texas Statutes and Codes Annotated, Penal Code, Section 36.02 (a)(1), provides that a person commits the offense of bribery if he intentionally and knowingly offers, confers, or agrees to confer on another, or solicits, accepts, or agrees to accept from another any benefit as consideration for the recipient's decision, opinion, recommendation, vote, or other exercise of official discretion as a public servant; and Section 32.06(a)(3) also makes it a crime of bribery to accept any benefit as consideration for a violation of a duty imposed by law on a public servant.
2. Vernon's Texas Statutes and Codes Annotated, Penal Code, Section 36.02(b), provides that it is no defense to a bribery prosecution that the person whom the actor sought to influence was not qualified to act in the desired way, whether because he had not yet assumed office or he lacked jurisdiction, or for any other reason.
3. Vernon's Texas Statutes and Codes Annotated, Penal Code, Section 36.02©, provides that it is no defense to a bribery prosecution that the person whom the actor sought to influence was not qualified to act in the desired way, whether because he had not yet assumed office or he lacked jurisdiction, or for any other reason.
4. Vernon's Texas Statutes and Codes Annotated, Penal Code, Section 36.08(e), provides that a public servant who exercises discretion in connection with contracts, purchases, payments, claims, or other pecuniary transactions of government commits an offense if he solicits, accepts, or agrees to accept any benefit from a person the public servant knows is interested in or is likely to become interested in any contract, purchase, payment, claim, or transaction involving the exercise of his discretion.
5. Vernon's Texas Statutes and Codes Annotated, Penal Code, Section 32.43(b), made it a crime for a person who is a fiduciary if, without the consent of his beneficiary, he intentionally or knowingly solicits, accepts, or agrees to accept any benefit from another person on agreement or understanding that the benefit will influence the conduct of the fiduciary in relation to the affairs of his beneficiary.
6. Texas Education Code, Section 44.031 provides that all school districts in the state of Texas which enter into contracts valued at more than \$25,000 in the aggregate for each 12-month period shall follow one of the methods prescribed in the statute which also provides the best value for the district. A Request for Proposals (RFP) is one of the methods by which a school district may enter into a contract.
7. Texas Education Code, Section 44.031 lists the following factors which may be considered when a school district, acting through a Board of Trustees, determines to whom to award a contract, among others: the purchase price, the reputation of the vendor and of the vendor's

goods and services, the quality of the vendor's goods and services, the extent to which the goods and services meet the district's needs, the vendor's past relationship with the district, the total long term cost to the district to acquire the vendor's goods and services, and any other relevant factors specifically listed in the request for bids or proposals.

8. Texas Education Code, Section 44.032, Enforcement of Purchase Procedures: Criminal Penalties; Removal; Ineligibility, makes it a crime (misdemeanor) for an officer or employee of a school district to, with criminal negligence, violate Section 44.031(a) or (b) or to knowingly violate Section 44.031 in a manner other than that prescribed in the section requiring criminal negligence.
9. The Texas Local Government Code, Chapter 271, Purchasing and Contracting Authority of Municipalities, Counties, and Certain other Local Governments, which includes school districts under section 271.003(4), in Sections 271.0065 and 271.0245, Additional Competitive Procedures require the following:
 - (a) In any procedure for competitive bidding under this subchapter, the governing body shall provide all bidders with the opportunity to bid on the same items on equal terms and have bids judged according to the same standard as set forth in the specifications.
 - (b) A governmental agency shall receive bids or proposals under this subchapter in a fair and confidential manner.
5. A Request for Proposal (RFP), as it relates to this Indictment, is an announcement by a government entity of a willingness to consider proposals for the performance of a specified project or program component.

C. The Conspiracy

Beginning on or about February 1, 2003, and continuing through and including on or about October 29, 2007, in the Western District of Texas and elsewhere, defendants,

**TOMAS GABALDON, and
JOSEPH O'HARA,**

conspired and agreed together with GL, SMM, and others known, but not charged herein, and others unknown, to commit offenses against the United States, that is to knowingly devise a scheme and artifice to defraud the El Paso Independent School District (EPISD) and the citizens of El Paso, Texas living and voting in the EPISD of the right to the honest services of defendant, **TOMAS**

GABALDON, a public servant and SMM, an elected EPISD Trustee, in the affairs of EPISD; and conspired to knowingly devise a scheme to obtain money and property by means of material false and fraudulent pretenses, representations and promises; that is, the defendant, **JOSEPH O'HARA**, and GL, agreed to pay cash money, campaign contributions and other bribes and kickbacks to defendant, **TOMAS GABALDON**, an EPISD administrator and SMM, a Trustee of EPISD, and said defendant, **TOMAS GABALDON**, a public servant and SMM agreed to receive cash money, campaign contributions and other bribes and kickbacks in exchange for defendant, **TOMAS GABALDON's** and SMM's support and vote in their official capacity with EPISD, in violation of their fiduciary duties as an EPISD administrator and elected Trustee, for agreements and contracts between EPISD and vendor-1, a vendor seeking business with the EPISD; and in furtherance of the scheme to deprive the EPISD and the citizens of El Paso, Texas living and voting in the EPISD of the honest services of the defendant, **TOMAS GABALDON**, and SMM, and to obtain money and property by material false and fraudulent pretenses, representations and promises the defendants and their co-conspirators sent and caused to be sent and delivered, by United States Postal Service, checks, proposals and other correspondence, all in violation of Title 18, United States Code, Sections 1349, 1346 and 1341.

D. SCHEME AND ARTIFICE TO DEFRAUD

In furtherance of the objectives of the conspiracy and the scheme and artifice to defraud, one or more conspirators engaged in the following method or means:

1. Defendant, **JOSEPH O'HARA** engaged the services of GL to assist vendor-1 in obtaining and maintaining a lucrative contract with EPISD through bribery and kickbacks to conspirator, **TOMAS GABALDON**, an administrator and SMM, an elected official;
2. Defendant, **TOMAS GABALDON** and SMM accepted bribes and kickbacks in

exchange for their support, vote and influence, as an EPISD administrator and Trustee, to vendor-1 in securing and maintaining a contract with the EPISD.

E. OVERT ACTS

In furtherance of the conspiracy and to further the objectives of the conspiracy, the defendants, **TOMAS GABALDON** and **JOSEPH O'HARA**, and others known, but not charged herein, committed the following overt acts:

1. From on or about 2003 and continuing through 2004, defendant, **JOSEPH O'HARA** and GL, paid defendant, **TOMAS GABALDON**, bribes, while defendant, **TOMAS GABALDON** served as an EPISD administrator.
2. In exchange for accepting bribes, defendant **TOMAS GABALDON**, from on or about 2003 and continuing through 2004, used his influence as an administrator to support vendor-1's original bid and contract amendments.
3. Beginning on or about 2003 and continuing through on or about 2006, SMM supported and voted for vendor-1 to amend and support a contract with EPISD. In exchange, for SMM's vote and support, defendant, **JOSEPH O'HARA** and GL, payed SMM a \$5,000 bribe and kickback on February 14, 2005 on behalf of vendor-1 in the form of a campaign contribution to SMM.

COUNT TWO

(18 U.S.C. §§ 1346, and 1341)

MAIL FRAUD AND THE DEPRIVATION OF HONEST SERVICES

The Introduction; Method and Means of the Conspiracy and Scheme and Artifice to Defraud; and the Overt Acts in Count One, of this Indictment are incorporated by reference as if fully laid out herein.

Beginning on or about February 1, 2003, and continuing through and including on or about

October 29, 2007, in the Western District of Texas and elsewhere, defendants,

**TOMAS GABALDON, and
JOSEPH O'HARA,**

individually and aiding and abetting each other, GL, SMM and others known but not charged herein and others unknown, knowingly devised a scheme and artifice to defraud the El Paso Independent School District (EPISD) and the citizens of El Paso, Texas living and voting in the EPISD of the right to the honest services of defendant, **TOMAS GABALDON**, a public servant and SMM, an elected EPISD Trustee, in the affairs of EPISD; and knowingly devised a scheme to obtain money and property by means of material false and fraudulent pretenses, representations and promises; that is, defendant, **JOSEPH O'HARA**, and GL, agreed to pay cash money, campaign contributions and other bribes and kickbacks to defendant, **TOMAS GABALDON**, an EPISD administrator and SMM, an elected Trustee of EPISD, and said defendant, **TOMAS GABALDON**, a public servant and SMM, a Trustee, agreed to receive cash money and other bribes and kickbacks in exchange for defendant, **TOMAS GABALDON's** continuing support to award and maintain a contract between vendor-1 and EPISD, and in exchange for SMM's vote to amend the original contract between vendor-1 and EPISD and secure continued payments to vendor-1 from EPISD, among other things, in violation of defendant, **TOMAS GABALDON's** and SMM's fiduciary duties as an EPISD administrator and Trustee, and in furtherance of the scheme to deprive the EPISD and the citizens of El Paso, Texas living and voting in the EPISD of the honest services of the defendant, **TOMAS GABALDON**, and SMM, and to obtain money and property by material false and fraudulent pretenses, representations and promises the defendants, charged and uncharged co-conspirators sent and caused to be sent and delivered, by United States Postal Service, checks, proposals and other correspondence, all in violation of Title 18, United States Code, Sections, 1346 and 1341.

COUNT THREE
(18 U.S.C. §§ 1349, 1346, and 1343)
CONSPIRACY TO COMMIT WIRE FRAUD AND THE
DEPRIVATION OF HONEST SERVICES

The Introduction; Method and Means of the Conspiracy and Scheme and Artifice to Defraud; and the Overt Acts in Count One, of this Indictment are incorporated by reference as if fully laid out herein.

Beginning on or about February 1, 2003, and continuing through and including on or about October 29, 2007, in the Western District of Texas and elsewhere, defendants,

TOMAS GABALDON, and
JOSEPH O'HARA,

conspired and agreed together with GL, SMM, and others known, but not charged herein, and others unknown, to commit offenses against the United States, that is to knowingly devise a scheme and artifice to defraud the El Paso Independent School District (EPISD) and the citizens of El Paso, Texas living and voting in the EPISD of the right to the honest services of defendant, **TOMAS GABALDON**, a public servant and SMM, an elected EPISD Trustee, in the affairs of EPISD; and conspired to knowingly devise a scheme to obtain money and property by means of material false and fraudulent pretenses, representations and promises; that is, the defendant, **JOSEPH O'HARA**, and GL, agreed to pay cash money, campaign contributions and other bribes and kickbacks to defendant, **TOMAS GABALDON**, an EPISD administrator and SMM, a Trustee of EPISD, and said defendant, **TOMAS GABALDON**, a public servant and SMM agreed to receive cash money, campaign contributions and other bribes and kickbacks in exchange for defendant, **TOMAS GABALDON's** and SMM's support and vote in their official capacity with EPISD, in violation of their fiduciary duties as an EPISD administrator and elected Trustee, for agreements and contracts between EPISD and vendor-1, a vendor seeking business with the EPISD; and in furtherance of the

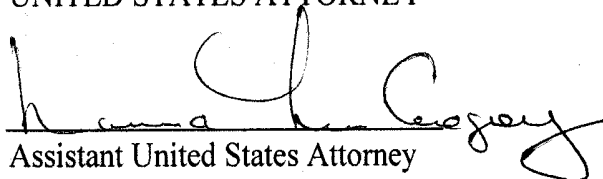
scheme to deprive the EPISD and the citizens of El Paso, Texas living and voting in the EPISD of the honest services of the defendant, **TOMAS GABALDON**, and SMM, and to obtain money and property by material false and fraudulent pretenses, representations and promises the defendants did send and cause the transmission by wire, in interstate and foreign commerce, writings, signs, signals, pictures and sounds including electronic mail (e-mail) communications and facsimile (fax) communications, all in violation of Title 18, United States Code, Sections 1349, 1346 and 1343.

A TRUE BILL

FOREPERSON OF THE GRAND JURY

JOHN E. MURPHY
UNITED STATES ATTORNEY

By:


Assistant United States Attorney